



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

BCS/143119

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 15, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on September 17, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly terminated the Petitioner's BadgerC are+ benefits effective September 1, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On September 26, 2011, pursuant to a divorce action, the circuit court entered a temporary order granting primary placement of Petitioner's three children to their mother, [REDACTED]. The court further ordered Petitioner and [REDACTED] to enter into mediation. (Exhibit 5, pg. 4)

3. On November 11, 2011, Petitioner and [REDACTED] entered into a parenting agreement, as the result of the court ordered mediation. The parenting agreement establishes joint custody, but gives primary placement of the children to Petitioner. (Exhibit 3, pgs. 14- 19; Petitioner's testimony)
4. Petitioner's children attend school in Illinois, in the district where [REDACTED] lives. However, the children reside with Petitioner four of seven days of the week. Holidays such as Easter and Christmas are to be split equitably, but the children are with Petitioner every Memorial Day and every Labor Day. (Exhibit 3, pg. 16; Petitioner's testimony)
5. Petitioner pays more than 50% for daycare for the children; he is the primary contact with the children's school and he is responsible for taking the children to their doctor's appointments. (Testimony of Petitioner)
6. On August 13, 2012, the agency sent Petitioner a notice of negative action, stating that his BadgerCare+ benefits and those of his three children would be ending effective September 1, 2012. (Exhibit 3, pg. 10)
7. On August 15, 2012, petitioner filed a request for a fair hearing.

### **DISCUSSION**

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin Families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1*. Thus, in order to be eligible for BadgerCare+ benefits an individual must either be a child under 19, a pregnant woman or a parent or caretaker of a child. *BEH §2.1*. If there is joint custody and placement exists with a parent who lives in another state, the child must be with the Wisconsin parent at least 50% of the time in a month to qualify for BC+. *BEH §2.2.1.2* Only one parent can qualify for BadgerCare+ at a time. *Id.*

The agency terminated the Petitioner's BadgerCare+ benefits, because they removed his three children from his assistance group, thus rendering him ineligible for benefits. The agency contends that because the children are enrolled in school in Illinois, that they must be residing in Illinois with their mother greater than 50% of the time. However, the location of a child's school is not determinative of the child's residence. The BadgerCare+ Eligibility Manual cited above, bases residency of a child upon a determination of which parent is the primary caretaker of the child, a fact that can either be established primarily through legal documentation or if that cannot be done, secondarily through which ever parent the child is currently living with or whichever parent is at the lower percentage of the Federal Poverty Level. *BEH §2.2.1.2*

In the case at hand, the parenting agreement plainly states on its face that Petitioner is to have the children four of seven days per week, with additional time on Memorial Day and Labor Day. This means that the children reside with Petitioner in Kenosha approximately 57% of the time. Accordingly, it is found that Petitioner is the primary caretaker of the children and therefore, they and he are eligible for BadgerCare+ benefits.

### **CONCLUSIONS OF LAW**

The agency incorrectly terminated Petitioner's and his children's BadgerCare+ benefits effective September 1, 2012.

**THEREFORE, it is**

### **ORDERED**

That BadgerCare+ benefits be reinstated for Petitioner and his three children effective September 1, 2012, if they are otherwise eligible. The agency shall do this within ten days of this decision.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

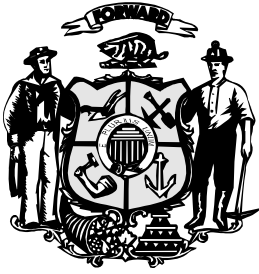
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of September, 2012.

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Kenosha County Human Service Department - email  
Department of Health Services – email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 25, 2012.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability